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2004 FEB 24 A 11:33

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

Audit Referral: 02-11  
Audit Referral Date: July 17, 2002  
Date Activated: December 18, 2002

Expiration of Statute  
of Limitations: December 28, 2005 –  
March 5, 2006<sup>1</sup>

**SOURCE:** Internally Generated Audit Referral

**RESPONDENTS:** Buchanan for President, Inc. and Angela M. "Bay" Buchanan as  
Treasurer

**RELEVANT STATUTES  
AND REGULATIONS<sup>2</sup>:**

2 U.S.C. § 431(4)(A)  
2 U.S.C. § 431(5)  
2 U.S.C. § 431(8)(A)(i)  
2 U.S.C. § 431(9)(A)(i)  
2 U.S.C. § 432(h)  
2 U.S.C. § 434(b)  
2 U.S.C. § 437g(a)  
2 U.S.C. § 437g(d)  
2 U.S.C. § 441a(a)(1)(A)  
2 U.S.C. § 441a(f)  
26 U.S.C. § 9038  
28 U.S.C. § 2462  
11 C.F.R. § 100.7(b)

<sup>1</sup> The first date in this range is five years from the first excessive contribution to Buchanan for President, Inc. that resulted from an endorsed Buchanan Reform, Inc. excessive contribution refund check. The second date is five years from the opening of the Buchanan Fund account. As discussed herein, under a continuing violation theory, the statute of limitations for the designation and reporting violations would run anew as long as the designation and reports remain outstanding.

<sup>2</sup> All of the facts relevant to this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended (the "Act") or statements of law regarding provisions of the Act contained in this report refer to the Act as it existed prior to the effective date of BCRA. Similarly, all citations to the Commission's regulations or statements of law regarding any specific regulation contained in this report refer to the 2002 edition of Title 11, Code of Federal Regulations, published prior to the Commission's promulgation of any regulations under BCRA.

1 11 C.F.R. § 100.8(b)  
2 11 C.F.R. §§ 100.71 – 100.92 (2002)  
3 11 C.F.R. §§ 100.130 – 100.154 (2002)  
4 11 C.F.R. § 102.5(a)  
5 11 C.F.R. § 103.1  
6 11 C.F.R. § 103.3(a)  
7 11 C.F.R. § 110.1(a)  
8 11 C.F.R. § 110.1(b)(1) (2002)  
9 11 C.F.R. § 110.1(b)(2)  
10 11 C.F.R. § 110.1(b)(4)  
11 11 C.F.R. § 110.1(b)(5) (2002)  
12 11 C.F.R. § 110.1(k)(3) (2002)  
13 11 C.F.R. § 9003.3(a)  
14 11 C.F.R. § 9034.4(b)  
15 11 C.F.R. § 9038.6

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17 **INTERNAL REPORTS CHECKED:** Audit Documents; Disclosure Reports

18  
19 **FEDERAL AGENCIES CHECKED:** None

20  
21 **I. INTRODUCTION**

22 The Commission audited Buchanan Reform, Inc. (the "BRI Committee") pursuant to 26  
23 U.S.C. § 9038. The BRI Committee was Patrick J. Buchanan's ("the Candidate") principal  
24 campaign committee for the Reform Party's nomination for President in 2000. The Audit  
25 Division referred this matter to the Office of General Counsel on July 17, 2002. A copy of the  
26 Audit Referral Memorandum is enclosed at Attachment 1. Although the audit of the BRI  
27 Committee related to the 2000 election cycle, the referral raises questions about the Candidate's  
28 primary campaign committee's activities with respect to the 1996 election cycle.

29 During the audit fieldwork, the Audit staff discovered an account, previously unknown to  
30 the Commission, entitled the "Buchanan Fund." The facts suggest that the Buchanan Fund was a  
31 federal account of "Buchanan for President, Inc.," which was Mr. Buchanan's 1996 presidential  
32 primary committee ("1996 Buchanan Primary Committee"). Therefore, the Buchanan Fund  
33 account contributors were subject to the contribution limitations for the 1996 election cycle, and

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1 some contributors exceeded these limitations. Neither the BRI Committee nor the 1996  
2 Buchanan Primary Committee reported the Buchanan Fund account receipt and disbursement  
3 activity.

4 The Audit staff also noted that the BRI Committee received excessive contributions and  
5 sent refund checks to its excessive contributors. However, numerous recipients of BRI  
6 Committee excessive contribution refund checks endorsed those checks to the Buchanan Fund  
7 account, thereby resulting in excessive contributions to the 1996 Buchanan Primary Committee.  
8 Furthermore, numerous recipients of BRI Committee excessive contribution refund checks  
9 endorsed those checks directly to the 1996 Buchanan Primary Committee, thereby resulting in  
10 excessive contributions to that committee. Therefore, these account activities suggested possible  
11 violations of the reporting requirements and contribution limitations under the Act. Because the  
12 apparent violations related to the Buchanan Fund arose out of conduct that is nearly identical to  
13 that for which the Commission admonished the same treasurer of a previous committee of the  
14 Candidate, this Office recommends that the Commission find reason to believe that the 1996  
15 Buchanan Primary Committee knowingly and willfully violated the Act with respect to the  
16 Buchanan Fund activity.

## 17 **II. BACKGROUND**

18 BRI Committee representatives described the Buchanan Fund as a non-federal account  
19 that was used to pay expenditures to promote the election. Attachment 1 at 1. The Buchanan  
20 Fund account was opened on March 5, 2001, with a deposit of \$3,879. During 2001, the account  
21 activity included total receipts of \$53,859 and total disbursements of \$48,551.<sup>3</sup> The Buchanan

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<sup>3</sup> The Buchanan Fund account remained open in 2002, but contained minimal funds. Its closing cash balance for 2001 was \$5,308. Statements from the first quarter of 2002 revealed deposits of \$1,609; disbursements of \$4,045; and a cash balance on March 29, 2002, of \$2,872. Attachment 1 at 1 n.1.

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1 Fund account's receipts in 2001 included \$8,219 of BRI Committee excessive contribution  
2 refund checks endorsed to the Buchanan Fund account<sup>4</sup> and \$45,520 in contributions directly  
3 from various donors' accounts.<sup>5</sup> A form letter, dated February 20, 2001, from the BRI  
4 Committee Treasurer (Angela M. "Bay" Buchanan) requesting endorsements of refund checks,  
5 states that the Buchanan Fund "will be used to pay campaign related expenses, which do not  
6 require 'federal' dollars for payment."<sup>6</sup> Attachment 2.

7 During 2001, the Buchanan Fund account disbursed \$27,431 to the United States  
8 Treasury on behalf of the 1996 Buchanan Primary Committee.<sup>7</sup> In addition, the Buchanan Fund  
9 account disbursed \$13,720 for legal fees attributed to the 1996 Buchanan Primary Committee  
10 and \$4,000 to an individual for the settlement of a lawsuit. Furthermore, on March 8, 2001, the  
11 Buchanan Fund account transferred \$3,000 to another bank to open an account entitled  
12 "Convention 2000." Attachment 1 at 2.

13 Neither the BRI Committee nor the 1996 Buchanan Primary Committee designated the  
14 depository which maintained the Buchanan Fund account. Moreover, neither the BRI

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<sup>4</sup> The total amount of refunds from the BRI Committee for excessive contributions was \$214,583.

<sup>5</sup> The Buchanan Fund account appears to have accepted one corporate contribution in the amount of \$62 Attachment 1 at 1-2. Given this small amount, this Office does not provide any recommendations regarding corporate contributions

<sup>6</sup> Although there are 27 BRI Committee excessive contribution refund checks endorsed to the Buchanan Fund, at this time we cannot confirm that the form letter was actually sent to specific payee/contributors. Most of the BRI Committee excessive contribution refund checks were dated in February 2001, and the endorsed checks were subsequently deposited in the Buchanan Fund account by early March 2001.

<sup>7</sup> The 1996 Buchanan Primary Committee owed the United States Treasury money in connection with MUR 5192. The conciliation agreement in MUR 5192 obligated the 1996 Buchanan Primary Committee to pay the Treasury as a result of the existence of "stale-dated committee checks." A committee that has received Presidential primary matching funds must pay the Treasury in the total amount of any "stale-dated committee checks," which are defined as outstanding committee checks to creditors or contributors that have not been cashed. 11 C.F.R. § 9038.6.

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Committee nor the 1996 Buchanan Primary Committee reported the Buchanan Fund account activity

In addition to the existence of the Buchanan Fund account, the Audit staff discovered that 144 BRI Committee excessive contribution refund checks (totaling \$34,605) were endorsed by the payees/contributors to the 1996 Buchanan Primary Committee.<sup>8</sup> The Audit staff found that 49 of the 144 endorsed contribution refund checks resulted in excessive contributions of \$14,483 to the 1996 Buchanan Primary Committee.

### III. ANALYSIS

#### A. The Buchanan Fund Account

##### 1. The 1996 Buchanan Primary Committee failed to report the Buchanan Fund account activity

A political committee must deposit all receipts into a checking account at a designated campaign depository, and it must make all disbursements (in excess of \$100) by checks or similar drafts drawn on accounts at such a depository. 2 U.S.C. § 432(h); *see also* 11 C.F.R. § 103.3(a). Furthermore, a political committee must notify the Commission of all of its designated depositories. 11 C.F.R. § 103.1. In addition, a political committee is required to report certain information, including the amount of cash on hand at the beginning of each reporting period, the total amount of receipts and disbursements for the reporting period and calendar year, and the identity of certain contributors. 2 U.S.C. § 434(b).

<sup>8</sup> As described above in Footnote 4, the total amount of refunds from the BRI Committee for excessive contributions was \$214,583. Moreover, the Audit staff obtained a BRI Committee form solicitation letter that asks a contribution refund payee to endorse his refund check to the Buchanan Fund; however, the Audit staff did not obtain any similar letter that asks a contribution refund payee to endorse his refund check to the 1996 Buchanan Primary Committee

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1 Although the BRI Committee described the Buchanan Fund to the Audit staff as a "non-  
2 federal account" that was "used to pay expenditures to promote the election," (Attachment 1 at  
3 1), the facts suggest that the Buchanan Fund was a federal account of the 1996 Buchanan  
4 Primary Committee that was used to benefit the Candidate's 1996 campaign. As described  
5 above, out of \$48,551 in Buchanan Fund account disbursements in 2001, more than \$41,000  
6 went to payments to the United States Treasury for stale-dated checks from the 1996 campaign,  
7 or for legal fees in connection with that campaign.<sup>9</sup> Moreover, the solicitation form letter from  
8 BRI Committee Treasurer Bay Buchanan requests that recipients of excessive contribution  
9 refund checks endorse them to the "Buchanan Fund" because the FEC "is now only finalizing its  
10 audit of Pat's 1996 campaign."<sup>10</sup> Attachment 2. Therefore, the Buchanan Fund account's  
11 receipts and disbursements appear to relate almost entirely to Mr. Buchanan's 1996 presidential  
12 primary election campaign.<sup>11</sup>

<sup>9</sup> The receipts and disbursements of the Buchanan Fund account do not fall under any of the categories of exemptions from the definitions of "contribution" and "expenditure" 11 C.F.R. §§ 100.7(b) and 100.8(b) (As of November 6, 2002, these regulations have been reorganized at 11 C.F.R. §§ 100.71 – 100.92 and §§ 100.130 – 100.154) See also 2 U.S.C. §§ 431(8)(A)(i) (definition of "contribution") and 431(9)(A)(i) (definition of "expenditure") Moreover, although some Buchanan Fund disbursements are related to legal matters (\$13,720 "for 1996 legal fees" and \$4,000 for "settle[ment of] a lawsuit"), the Buchanan Fund could not qualify as a "legal defense fund" See Advisory Opinions 2003-15, 2000-40, 1996-39, 1983-21, 1981-13. A "legal defense fund" is not subject to the prohibitions and limitations of the Act only if the funds therein are raised and spent by an entity that is not a political committee, and if the funds are used exclusively for the purpose of defraying legal costs. See AO 2003-15. Here, the funds were not used exclusively for defraying legal costs, since over half of the disbursements from the Buchanan Fund in 2001 went to the Treasury (as described above in footnote 7). Therefore, the Buchanan Fund would not qualify as a "legal defense fund"

<sup>10</sup> This form letter also claims that auditors have "not even begun their work on the 2000 campaign," but that "repayment is a certainty" The Commission's audit of Buchanan's "2000 campaign" actually resulted in a determination of a \$58,033 repayment to the United States Treasury from the general committee ("Buchanan Foster, Inc."), but no repayment from the primary committee ("Buchanan Reform, Inc."). Report of the Audit Division on Buchanan Foster, Inc., Approved Dec. 23, 2002, Report of the Audit Division on Buchanan Reform, Inc., Approved Nov. 22, 2002.

<sup>11</sup> No evidence exists that the Buchanan Fund financed any "political activity in connection with .. non-federal elections"; therefore, no basis exists to characterize the Buchanan Fund as a non-federal account 11 C.F.R. § 102.5(a)

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1 The 1996 Buchanan Primary Committee – a type of political committee under 2 U.S.C.  
2 §§ 431(4) and 431(5) – has not designated a depository containing the Buchanan Fund account.  
3 Its most recent amended Statement of Organization (dated November 9, 1999) lists nine “Banks  
4 or Other Depositories,” none of which is the bank (First Union National Bank) at which the  
5 Buchanan Fund account is maintained. The 1996 Buchanan Primary Committee also has failed  
6 to report the Buchanan Fund account’s activity. Therefore, this Office recommends that the  
7 Commission find reason to believe that the 1996 Buchanan Primary Committee and Angela M.  
8 “Bay” Buchanan, as Treasurer, violated 2 U.S.C. §§ 432(h) and 434(b).<sup>12</sup> As explained below in  
9 Section III.A.3., this Office recommends that the Commission find reason to believe that these  
10 violations were knowing and willful.

11 **2. The 1996 Buchanan Primary Committee received excessive**  
12 **contributions as a result of the Buchanan Fund account activity**  
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14 Given that the Buchanan Fund account’s receipt and disbursement activity related to the  
15 1996 election, the account’s contributors are subject to the contribution limitations for that  
16 election cycle.<sup>13</sup> See AO 1989-22 (contributions solicited to pay debts remaining from previous

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<sup>12</sup> The 1996 Buchanan Primary Committee still has not designated the depository containing the Buchanan Fund account, nor has it reported its activity. The statute of limitations at 28 U.S.C. § 2462 applies to Commission actions for the assessment or imposition of civil penalties under the Act. *FEC v. Williams*, 104 F.3d 237, 240 (9<sup>th</sup> Cir. 1996), *cert. denied*, 522 U.S. 1015 (1997). Under a continuing violation theory, which “applies where the conduct is ongoing, rather than a single event,” a “new claim accrues each day the violation is extant.” *Interamericas Inv., Ltd. v. Board of Governors*, 111 F.3d 376, 382 (5<sup>th</sup> Cir. 1997) (continuing violation theory could apply to limitation of 28 U.S.C. § 2462 based on court’s analysis of the language of the statute that was violated). Applying this theory, the statute of limitations for the 1996 Buchanan Primary Committee’s designation and reporting violations with respect to the Buchanan Fund account would run anew as long as the designation and reports remain outstanding.

<sup>13</sup> A subsidiary issue that arises in this matter is whether the endorsed refund checks were properly “designated in writing” for the 1996 election cycle, because they did not “clearly indicate[] the particular election with respect to which the contribution [was] made.” 11 C.F.R. §§ 110.1(b)(2) and 110.1(b)(4)(i). If a contribution is not “designated in writing by the contributor for a particular election,” then it is deemed to be made with respect to “the next election for that Federal office after the contribution is made.” 11 C.F.R. § 110.1(b)(2)(ii), *see* AO 1990-30. Here, with the mere designation of the “Buchanan Fund” on the endorsed checks, these contributions – received in 2001 – were arguably not made “with respect to” the 1996 election. Nevertheless, even if the Buchanan Fund were initially considered (under the designation regulations) to be an account for a subsequent (*e.g.*, 2004)

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election must comply with limits applied to that election); *FEC v. Ted Haley Cong. Comm.*, 852 F.2d 1111, 1115 (9<sup>th</sup> Cir. 1988) (accepting FEC's statutory interpretation that post-election donation to retire campaign debt is subject to contribution limitations with respect to that election). At the time of the Buchanan Fund account's activity, the Act prohibited individual contributions to any candidate and his authorized committees with respect to any election for federal office which, in the aggregate, exceeded \$1,000.<sup>14</sup> 2 U.S.C. § 441a(1)(A). Furthermore, the Act prohibits political committees from accepting excessive contributions. 2 U.S.C. § 441a(f). Therefore, individual contributions to the Buchanan Fund (which, as described above, was a federal account used to benefit the 1996 campaign), when aggregated with other contributions to Buchanan and his authorized committees for the 1996 election cycle (namely, the 1996 Buchanan Primary Committee), should be limited to \$1,000.

The Buchanan Fund account received contributions in two ways: (1) from endorsed BRI Committee excessive contribution refund checks;<sup>15</sup> and (2) from direct contributions from donors' accounts.<sup>16</sup> When their donations were aggregated with other contributions to the 1996 election cycle (*i.e.*, contributions made to the 1996 Buchanan Primary Committee), 74 contributors to the Buchanan Fund account exceeded the \$1,000 contribution limitation

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election cycle, the contributions must be counted against the limits applicable to the 1996 election because these contributions were "actually solicited to pay the debts remaining from the previous election." AO 1989-22, *see FEC v. Ted Haley Cong. Comm.*, 852 F.2d 1111, 1115 (9<sup>th</sup> Cir. 1988).

<sup>14</sup> We use the term "individual" as an abbreviation for persons other than multicandidate political committees. See 11 C.F.R. § 110.1(a). Effective January 1, 2003, the individual contribution limit was increased to \$2,000 2 U.S.C. § 441a(1)(A); 11 C.F.R. § 110.1(b)(1) (2002).

<sup>15</sup> The Buchanan Fund account received 27 endorsed BRI Committee excessive contribution refund checks. All but one of these checks were in amounts less than or equal to \$1,000. The single exception was an endorsed refund check from Mary Rogge in the amount of \$2,500.

<sup>16</sup> The Buchanan Fund account received 152 contributions directly from donors' accounts. Most of these contributions were in the range of \$25 to \$1,000, however, two checks exceeded the contribution limitations on their faces. These checks were written in the amounts of \$10,000 (from Fred C. Morse, III) and \$5,000 (from Stuart C. Irby, Jr.)

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(resulting in total excessive contributions of \$49,867). Therefore, this Office recommends that the Commission find reason to believe that the 1996 Buchanan Primary Committee and Angela M. "Bay" Buchanan, as Treasurer, violated 2 U.S.C. § 441a(f) by accepting contributions to the Buchanan Fund account from 74 individuals in excess of the \$1,000 limitation. As explained below in Section III.A.3., this Office recommends that the Commission find reason to believe that this violation was knowing and willful.

We do not know how the Buchanan Fund account solicited all of the contributions it received, but the form letter discussed above (addressed to BRI Committee excessive contribution refund recipients) indicates that the BRI Committee was willing to suggest that contributions to the Buchanan Fund account would not be subject to the limitations of the Act. Therefore, the Buchanan Fund account contributors may have relied on the BRI Committee's assurances that their contributions would be legal contributions to a "non-federal" account.

Only eight individuals made contributions to the Buchanan Fund account in which the excessive portion (after applying the rules for presumptive redesignation and reattribution) was greater than \$1,000.<sup>17</sup> These individuals, in descending order of the excessive portions of their contributions, are: Fred C. Morse, III (\$12,000); Stuart C. Irby, Jr. (\$5,500); Mary Rogge

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Political committees may presumptively *redesignate* to the general election all or part of an excessive contribution made before a primary election, without obtaining a written redesignation from the contributor, if: (1) the contribution was not designated for a particular election; (2) the redesignation would not result in an excessive contribution; and (3) within 60 days after the contribution is received, the committee notifies the contributor of the redesignation and offers a refund. 11 C.F.R. § 110.1(b)(5)(ii)(B) (2002). Presumptive redesignation is not possible here because Mr. Buchanan only ran in a primary (but not the general) election in 1996. Political committees may presumptively *reattribute* the excessive portion of a contribution made by check (or other written instrument) to any one or more persons whose name is imprinted thereon, without obtaining a written reattribution from the contributors, so long as the reattribution would not result in an excessive contribution and the committee, within 60 days, notifies all contributors of the reattribution and offers a refund. 11 C.F.R. § 110.1(k)(3)(ii)(B) (2002).

1 (\$4,650); Carol Patton (\$2,000); Roger Schaller (\$1,500); Richard Thompson (\$1,500); Michael  
2 Stiennon (\$1,250); and Bernard Brueggerman (\$1,025). Given the possibility that the individual  
3 contributors relied on the BRI Committee's assurances that the contributions to the Buchanan  
4 Fund were legal, this Office therefore makes no recommendation with respect to Fred C. Morse,  
5 III; Stuart C. Irby, Jr.; Mary Rogge; Carol Patton; Roger Schaller; Richard Thompson; Michael  
6 Stiennon; and Bernard Brueggerman. Furthermore, for the same reason

7 this Office makes no recommendation regarding the other 66 contributors who  
8 made excessive contributions to the Buchanan Fund account,

9  
10 **3. "Knowing and willful" violations**

11 "Knowing and willful" violations of the Act expose respondents to increased penalties.  
12 The Act provides that "[i]f the Commission believes that a knowing and willful violation of [the  
13 Act] ... has been committed," then a conciliation agreement may require a civil penalty up to the  
14 greater of \$10,000 or 200% of "any contribution or expenditure involved in such violation."  
15 2 U.S.C. § 437g(a)(5)(B). *See also* 2 U.S.C. §§ 437g(a)(6)(C) and 437g(d) (penalties for  
16 "knowing and willful" violations).<sup>18</sup>

17 The District of Columbia Circuit has concluded that a "knowing and willful"  
18 determination under the Act requires a finding of "'defiance' or 'knowing, conscious, and  
19 deliberate flaunting' [sic] of the Act." *National Right to Work Comm. v. FEC*, 716 F.2d 1401,  
20 1403 (D.C. Cir. 1983) (citing *AFL-CIO v. FEC*, 628 F.2d 97, 98, 101 (D.C. Cir. 1980)). *See also*  
21 *United States v. Hopkins*, 916 F.2d 207, 214 (5<sup>th</sup> Cir. 1990) (under 18 U.S.C. § 1001, a "knowing

<sup>18</sup> As noted above in footnote 2, the pre-BCRA Act governs this matter. BCRA increased the permissible penalties for certain "knowing and willful" violations of the Act. *See* 2 U.S.C. §§ 437g(a)(5)(B); 437g(a)(6)(C) and 437g(d) (2002).

1 and willful" false representation can be proved by showing that the defendant acted "deliberately  
2 and with knowledge that the representation was false"); *FEC v. Dramesi for Congress Comm.*,  
3 640 F. Supp. 985, 987 (D.N.J. 1986) ("knowing" standard under FECA, in contrast to "knowing  
4 and willful" standard, does not require knowledge that one is violating a law, but merely requires  
5 an intent to act).

6 The Commission previously has found reason to believe that a respondent committee  
7 committed "knowing and willful" violations where the Audit staff, in a prior matter, specifically  
8 discussed the same violations with the same committee. In MUR 2613 the Commission found  
9 reason to believe that a political committee knowingly and willfully violated certain  
10 recordkeeping requirements under the Act and regulations.<sup>19</sup> That matter arose from an audit of  
11 the committee where the Audit staff had discussed the identical recordkeeping violations with  
12 the same committee during the exit conference for the audit of the previous election cycle. First  
13 General Counsel's Report in MUR 2613 (June 6, 1988) at 4-5.

14 In the present matter, this Office recommends that the Commission find reason to believe  
15 that the 1996 Buchanan Primary Committee knowingly and willfully violated the Act with  
16 respect to the Buchanan Fund account activity (discussed above in parts III.A.1 and III.A.2)  
17 based on that committee's previous similar activity, which resulted in a Commission  
18 admonishment. In MUR 4918, the 1996 Buchanan Primary Committee attempted to channel  
19 excessive contributions to an account it claimed was exempt from the Act's limitations; however,  
20 the committee made disbursements from the account that disqualified it from any exemption.<sup>20</sup>

<sup>19</sup> MUR 2613 and MUR 2525 were merged with MUR 2648 on December 13, 1988

<sup>20</sup> In MUR 4918, the 1996 Buchanan Primary Committee requested that the recipients of its excessive contribution refund checks endorse them as "Payable to Buchanan Compliance Fund." See First General Counsel's Report in MUR 4918 (July 27, 1999). The alleged "compliance" funds, to which many contribution refund

1 Although the Commission did not pursue the committee beyond reason to believe  
2 the Commission nonetheless explicitly  
3 admonished the "compliance" fund Treasurer (Bay Buchanan) – who also currently serves as  
4 Treasurer of the 1996 Buchanan Primary Committee.<sup>21</sup>

5 The Commission's disposition of MUR 4918 specifically notified the Treasurer of the  
6 1996 Buchanan Primary Committee that the committee's failure to treat certain accounts in  
7 compliance with the Act could result in a violation.<sup>22</sup> As in MUR 2613, the nearly identical  
8 activities addressed in both the present matter and in MUR 4918 support a finding that the  
9 apparent violations relating to the Buchanan Fund were "knowing and willful." The  
10 Respondents' Buchanan Fund activity, in light of a previous admonishment for similar conduct,  
11 suggests "defiance" of the Act, *National Right to Work Comm.*, 716 F.2d at 1403, and suggests  
12 that the Respondents acted with "knowledge that [they were] violating a law." *Dramesi*, 640 F.  
13 Supp. at 987. Therefore, this Office recommends that the Commission find reason to believe that  
14 the 1996 Buchanan Primary Committee and Angela M. "Bay" Buchanan, as Treasurer,

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recipients endorsed their checks, could not qualify as "general election legal and accounting compliance funds," in accordance with 11 C.F.R. § 9003.3(a), because Mr. Buchanan was a candidate in the primary – but not the *general* – election for the relevant election cycles. In addition, the accounts did not qualify as civil and criminal penalty accounts, pursuant to 11 C.F.R. § 9034.4(b)(4), because the accounts did not limit their disbursements to the payment of civil and criminal penalties. *Id.* at 6.

<sup>21</sup> See Letter from Scott E. Thomas to Angela M. "Bay" Buchanan in MUR 4918 (Aug. 30, 1999) (Attachment 3). Concluding that the funds placed in the account were "contributions," and noting the resulting excessive contributions, the Commission stated that "[y]ou should take steps to ensure that this activity does not occur in the future." *Id.*

<sup>22</sup> In its MUR 4918 admonishment letter, the Commission warned Treasurer Bay Buchanan of an apparent Section 441a(f) violation (excessive contributions), but it did not address potential violations under Sections 432(h) (depository designation) and 434(b) (reporting), which are at issue in the present matter. Nevertheless, the Act's depository designation and reporting requirements are intimately related to a political committee's operation of an account. The 1996 Buchanan Primary Committee's operation of the Buchanan Fund account in this matter was nearly identical activity to its conduct in MUR 4918; therefore, even though the MUR 4918 admonishment letter did not mention Sections 432(h) and 434(b), we believe that it is appropriate to find reason to believe that the Respondents committed "knowing and willful" violations under those provisions.

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<sup>23</sup> As noted in footnote 17, the rules for presumptive redesignation do not apply here because Mr. Buchanan only ran in a primary (but not the general) election in 1996. In addition, the rules for presumptive reattribution do not apply to the endorsed BRI Committee excessive contribution refund checks because each refund check only contained one named payee who could subsequently endorse it to the 1996 Buchanan Primary Committee.

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3 **IV. PROPOSED ACTION**

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**V. RECOMMENDATIONS**

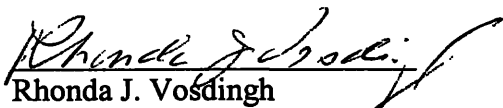
1. Open a Matter Under Review.
2. Find reason to believe that the 1996 Buchanan Primary Committee ("Buchanan for President, Inc."), and Angela M. "Bay" Buchanan as Treasurer, knowingly and willfully violated 2 U.S.C. § 432(h) by failing to designate a depository with respect to the Buchanan Fund account, and by failing to deposit receipts into and make disbursements from an account in a designated depository.
3. Find reason to believe that Buchanan for President, Inc., and Angela M. "Bay" Buchanan as Treasurer, knowingly and willfully violated 2 U.S.C. § 434(b) by failing to comply with the reporting requirements for the Buchanan Fund account activity.
4. Find reason to believe that Buchanan for President, Inc., and Angela M. "Bay" Buchanan as Treasurer, knowingly and willfully violated 2 U.S.C. § 441a(f) by accepting a total of \$49,867 in contributions to that committee's Buchanan Fund account.
5. Find reason to believe that Buchanan for President, Inc., and Angela M. "Bay" Buchanan as Treasurer, violated 2 U.S.C. § 441a(f) by accepting a total of \$14,483 in contributions to that committee's other account(s) (other than the Buchanan Fund) in excess of the \$1,000 individual limitation.
- 6.
- 7.
- 8.
9. Approve the attached Factual and Legal Analyses. (Attachment 5).
10. Approve the appropriate letter(s).

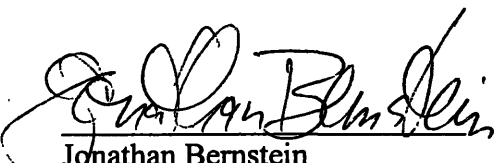
Lawrence H. Norton  
General Counsel


2/28/04  
Date

BY:

  
James A. Kahl  
Deputy General Counsel

  
Rhonda J. Vosdigh  
Associate General Counsel for Enforcement

  
Jonathan Bernstein  
Assistant General Counsel

  
Mark A. Goodin  
Attorney

Attachments:

- 1.
- 2.
3. Letter from Scott Thomas to Angela M. "Bay" Buchanan in MUR 4918 (Aug. 30, 1999)
- 4.
- 5.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

AUG 30 1999

Angela M. "Bay" Buchanan  
Treasurer, Buchanan Compliance Fund '92  
6862 Elm Street, Suite 210  
McLean, VA 22101

RE: MUR 4918

Dear Ms. Buchanan:

On August 17, 1999, the Federal Election Commission found reason to believe that the Buchanan Compliance Fund '92, and you as treasurer, violated 2 U.S.C. § 441a(f) of the Federal Election Campaign Act of 1971, as amended ("the Act"). However, after considering the circumstances of this matter, the Commission also determined to take no further action and close the file. The First General Counsel's Report, including the Factual and Legal Analysis which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that funds used to pay civil penalties from civil penalty accounts shall not be deemed contributions or expenditures. 11 C.F.R. § 9034.4(b)(4). However, because you made disbursements from your civil penalty account for legal fees and expenses other than civil penalties, the funds that were placed in the account are contributions, and thus subject to the contribution and expenditure limitations. *Id.* It appears that the Buchanan Compliance Fund '92 received contributions in excess of \$1,000 in violation of 2 U.S.C. § 441a(f). You should take steps to ensure that this activity does not occur in the future.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

ATTACHMENT 3  
PAGE 1 OF 2

99-04-394-0202

If you have any questions, please contact Jamila Wyatt, the attorney assigned to this matter at (202)694-1650.

Sincerely,



Scott Thomas  
Chairman

Enclosure

cc: Patrick Buchanan

99.04.394.0203

ATTACHMENT 3  
PAGE 2 OF 2